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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: MIAMI, FL

Date: JAN 06 2005

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a violation of law relating to a controlled substance. The applicant is the spouse of a citizen of the United States and the son of a lawful permanent resident of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 23, 2003.

On appeal, the applicant contends that his spouse will suffer extreme hardship in the absence of the applicant. *Statements in Support of Georges Loriston's Appeal of the Denial of his Application for a Waiver of Grounds of Inadmissibility*, dated November 13, 2003.

In support of these assertions, the applicant submits a statement signed by himself and his spouse and a letter from a chiropractic and rehabilitation center where the applicant's spouse receives treatment. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on May 24, 2002, the applicant was convicted of Possession of Marijuana in the County Court in and for Dade County, Florida.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

....

- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of ... subparagraph (A)(i)(II) of [subsection (a)(2)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

....

- (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if

it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The applicant contends that his spouse suffers from a number of medical conditions. He submits a letter stating that the applicant's spouse undergoes rehabilitative treatment for ailments resulting from an automobile accident that occurred during June 2003. *Letter from Amir Kermani, DC*, dated November 11, 2003. The applicant further states that his spouse suffers from depression as a result of the applicant's inadmissibility and that she would be unable to access medical treatment for her conditions in Haiti. *Statements in Support of Georges Loriston's Appeal of the Denial of his Application for a Waiver of Grounds of Inadmissibility*. The AAO acknowledges that the health conditions suffered by the applicant's spouse are regrettable, however the record fails to establish the extent and duration of the indicated conditions. Although the applicant's spouse asserts that she was "ordered not to return [to] work," the record does not contain statements from a medical professional establishing that the applicant's spouse is unable to work or care for herself on a daily basis. *Letter from Persharna Morgan*, undated. The record also fails to reflect whether the applicant's spouse has sought or received therapy and/or other treatment from a mental health professional in regard to the depression that the applicant contends she endures. *Statements in Support of Georges Loriston's Appeal of the Denial of his Application for a Waiver of Grounds of Inadmissibility*. Further, the record does not contain substantiation of the applicant's assertion that his spouse would be unable to access medical care in Haiti if she relocated there in order to remain with the applicant.

The record does not contain any assertions of hardship suffered by the applicant's lawful permanent resident mother as a result of the applicant's inadmissibility to the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme

hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.